



**UNITED STATES DEPARTMENT OF COMMERCE  
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/118,675	07/17/98	BAR	C ROHO-6644US

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EXAMINER

NELSON JR, M

ART UNIT

PAPER NUMBER

3624

DATE MAILED: 09/27/99

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

09/118,675

Applicant(s)

Bar et al.

Examiner

Milton Nelson, Jr.

Group Art Unit

3624

☒ Responsive to communication(s) filed on Jul 6, 1999

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 2-29 and 31-96 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☒ Claim(s) 42-68, 76, 84-91, and 93-95 is/are allowed.

☒ Claim(s) 2-29, 31-41, 69-75, 77-83, 92, and 96 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 3

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

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## DETAILED ACTION

### *Information Disclosure Statement*

1. The information referred to in the information disclosure statement filed January 11, 1999 has been considered as to the merits.

### *Claim Rejections - 35 USC § 112*

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 2-29, 31-41, 69-75 and 83 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims are replete with indefinite language. **Examples** are as follows: In claim 2, it cannot be determined whether applicant intends to claim the combination of a backrest system and a chair, or the subcombination of a backrest system for a chair. Note that line 1 of the claim appears to set forth the subcombination ("a backrest system for a chair"), while line 9 appears to set forth the combination ("one side plate" of the system "being disposed between each post" of the chair). Similar instances of vagueness between the combination and the subcombination can be found throughout the claims (e.g. see lines 2-5 of claim 6, lines 4-6 of claim 18, lines 2-3 of claim 21, and lines 4-6 and 10-11 of claim 22). In line 3 of claim 39, "the

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user” lacks proper antecedent basis. In claim 78, the first section of the ball is set forth as being “movable inwardly and outwardly”. The claim is lacking sufficient structure or means to support such functional language. Applicant is reminded that these specific citations are exemplary only, as numerous similar instances of indefiniteness can be found throughout the claims.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 69, as best understood with the above cited indefiniteness, is rejected under 35 U.S.C. 102(b) as being anticipated by Jay (5,593,211). Note the support chassis (50), backing plate (18), insert (12) and cover (30).

6. Claims 74 and 75, as best understood with the above cited indefiniteness, are rejected under 35 U.S.C. 102(b) as being anticipated by Newkirk (2,928,686). Note the first section (30), second section (12), socket (14) and means for moving (28).

7. Claim 83, as best understood with the above cited indefiniteness, is rejected under 35 U.S.C. 102(b) as being anticipated by Newkirk (2,928,686). Note the first section (30), second section (12) and stud (14).

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8. Claim 92 is rejected under 35 U.S.C. 102(b) as being anticipated by Jay (5,593,211).

Note the support chassis (50).

9. Claim 96 is rejected under 35 U.S.C. 102(b) as being anticipated by Newkirk (2,928,686).

Note the first section (30), second section (12), socket (14) and bracket (22).

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claim 77 is rejected under 35 U.S.C. 103(a) as being unpatentable over Newkirk (2,928,686) in view of Templeman (4,565,345)

Newkirk discloses the claimed invention with the exception of the first section of the ball being constructed from a nylon material.

Templeman teaches the conventional concept of providing a first section of a ball as constructed from a nylon material.

It would have been obvious to one having ordinary skill in the pertinent art at the time of the instant invention to modify Newkirk in view of the Templeman by configuring the first section of the ball as constructed from a nylon material. Such enhances smooth movement of the ball.

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***Allowable Subject Matter***

12. Claims 42-68, 76, 84-91, and 93-95 are allowed.
13. Claims 3-17, 19-21, 23-25, 27-29, 31-39, 41, 70-73 and 79-82 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2<sup>nd</sup> paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.
14. Claim 2, 18, 22, 26, 40 and 78 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2<sup>nd</sup> paragraph, set forth in this Office action.

***Response to Arguments***

15. Applicant's response filed July 6, 1999 has been fully considered. The formal drawings filed July 17, 1998 have been approved by the Drafting Review Branch. Section 2 of the previous Office action inadvertently indicated otherwise. Indefiniteness remains in the claims as indicated above. Numerous claims have been allowed, as indicated above. Claims 69 and 92 are anticipated by Jay ('211). Contrary to Applicant's arguments, Jay shows a plurality of pads, with each being positioned to support a particular region of a users back. Jay clearly shows a support chassis disposed between the posts and mounted to the back support for supporting the pads. Jay also shows a two-point attachment assembly connectable to each of said posts (note the actual claim language, which appears to set forth two points at each of the posts, i.e. four points of attachment). Regarding claims 74 and 83, contrary to Applicant's arguments, the plug in Newkirk is clearly formed by passing a cutting plane through the ball so that the first section has a

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maximum circumference corresponding to that of a small circle of the ball, and the second section has a maximum circumference corresponding to that of a great circle of the ball. Regarding claims 74, 83 and 96, having a ball that rotates relative to the socket necessitates that the socket rotates relative to the ball. In response to Applicant's argument that there is no suggestion to combine the references applied to claim 77, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. Regarding Applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references.

### ***Conclusion***

**16. THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

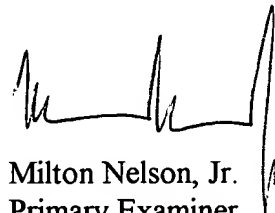
17. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-1113.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Milton Nelson, Jr. whose telephone number is (703) 308-2117. The examiner can normally be reached on Monday-Thursday from 6:30 AM-4:00PM. The examiner can also be reached on alternate Fridays.

The fax number for this Group is (703) 305-7687.

mn

September 27, 1999



Milton Nelson, Jr.  
Primary Examiner  
Art Unit 3624